



## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Privacy Act of 1974; System of Records

**AGENCY:** Agency for International Development (USAID).

**ACTION:** Notice of Modified Privacy Act System of Records.

**SUMMARY:** The United States Agency for International Development (USAID) proposes to modify an existing Agency-wide system of records entitled, Litigation Records. This system of records contains records used to assist attorneys and legal staff in providing legal advice to the agency on a wide variety of legal issues. This modification includes updates to the following sections: “System Location”, “System Manager”, “Categories of Records in the System” to include what PII is collected, “Routine Uses of Records Maintained in the System”, “Policies and Practices for Retention and Disposal of Records” adding the approved NARA disposition schedule, and “Administrative, Technical, and Physical Safeguards”.

**DATES:** Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments:

#### Electronic:

- Federal eRulemaking Portal: [www.regulations.gov](https://www.regulations.gov). Follow the instructions on the Web site for submitting comments.
- E-mail: [Privacy@usaid.gov](mailto:Privacy@usaid.gov)

#### Paper:

- Fax: 202-916-4946
- Mail: Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW, Washington, D. C. 20523.

**FOR FURTHER INFORMATION CONTACT:** Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20523, or by phone number at 202-916-4605.

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, USAID is publishing notice of proposed updates and reissuance of its system of records titled “USAID 26- Litigation Records,” last published in full in the Federal Register on 02/06/2014 (42 FR 47386). USAID proposes to modify this system of records with the revisions to the following sections: the purposes for maintaining the system; the system’s storage location/environment; the system location; and routine uses, including new routine uses pursuant to new requirements announced by OMB on January 3, 2017, in its memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information.

**SYSTEM NAME AND NUMBER:** USAID-26, Litigation Records

**SECURITY CLASSIFICATION:** Unclassified

**SYSTEM LOCATION:** 1300 Pennsylvania Avenue, NW, Washington, DC 20523.

**SYSTEM MANAGER:** Office of General Counsel, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20523. Email: [gcams@usaid.gov](mailto:gcams@usaid.gov).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 5 U.S.C. 301; Foreign Assistance Act of 1961, as amended; Foreign Service Act of 1946, as amended; Federal Tort Claims Act; Federal Claims Collection Act, 31 U. S. C. 951-953; The Federal Records Act, 44 U. S. C. 3101; False Claims Act; Age Discrimination in Employment Act, the Equal Pay Act, section 321 of the Government Employees Rights Act of 1991; 5 U.S.C. 1204; 5 U. S. C. 7301, 7351, 7353; 5 U. S. C. App. (Ethics in Government Act of 1978); 31 U. S. C. 1353; E. O. 12674 (as modified by E. O. 12731); Federal Service Labor Management Relations Statute; Title VII of the Civil Rights Act of 1964; Freedom of Information Act; and other legislation as may be implicated in the course of attorneys’ legal work representing USAID, including litigation.

**PURPOSE OF THE SYSTEM:** The purpose of this system is to assist USAID's Office of General Counsel staff in providing legal advice to USAID personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with USAID, as well as the attorneys representing them; to collect information in response to allegations filed by employees, former employees, and other individuals as needed; to advise on legal issues; to assist in the settlement of claims against the government; to maintain information collected and/or generated to represent USAID in administrative or federal proceedings and any other type of litigation or advisory work. This includes litigation or proceedings against or involving USAID, and includes preparing for reasonably anticipated litigation/proceedings, or responding to requests for USAID employee testimony or records. USAID uses the records contained within USAID 26 - Litigation Records to document how USAID handles each matter; provide a resource for consistency in interpretation and application of the law; and allow for statistical reports and analysis of matters processed by the Office of General Counsel.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Individuals who are or who USAID reasonably anticipates may be involved in civil and criminal litigation, or administrative proceedings, that involve USAID, its employees/contractors/workforce (to include foreign service officers), the United States, or USAID records, including but not limited to USAID employees, attorneys, witnesses, plaintiffs, defendants, or third parties involved in such litigation.

**CATEGORIES OF RECORDS IN THE SYSTEM:** This system maintains information collected or generated in response to, or in anticipation of, civil and criminal litigation, or administrative proceedings, which may include: names of individuals involved; names of witnesses; Social Security number (SSN), if applicable; contact information; information pertaining to the subject matter of litigation, complaints, answers, motions, briefs, orders, decisions, correspondence, exhibits, discovery, legal research, hearing and deposition transcripts, investigation reports; claims and records regarding discrimination, including employment and sex discrimination, including reasonable and/or religious accommodation issues; claims and records regarding the Rehabilitation Act; personnel matters; claims and records communications with the Department of Justice (DOJ), medical records, such as evaluations by physicians in cases where personal injury or alleged disabling conditions are involved; records relating to requests for USAID records other than requests under the Freedom of Information Act and the Privacy Act of 1974; testimonies of USAID employees in federal, state, local, or administrative criminal or civil litigation; documentary evidence; supporting documents including the legal and

programmatic issues of the case, correspondence, legal opinions and memoranda and related records; State Bar grievance/discipline proceedings records; security Clearance Information; any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence; employee and former employee ethics question forms and responses; and court transcripts.

**RECORD SOURCE CATEGORIES:** Information contained in this system is obtained from existing USAID records; legal pleadings, discovery, and other records exchanged between parties and their attorneys in litigation and pre-litigation; courts; State and local governments; other Federal agencies; and other individuals and entities with information relevant to cases involving USAID, its employees, the United States, or USAID records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** We will disclose records pursuant to the following routine uses, however, we will not disclose any information defined as “return or return information” under 26 U. S. C. 6103 of the Internal Revenue Service Code, unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations. In addition to those disclosures generally permitted under 5 U. S. C. 552a(b), relevant records or information in this system may be disclosed without consent as follows:

- (a) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the assignment, detail, or deployment of an employee; the letting of a contract; or the approval of a grant or other benefits.
- (b) To appropriate State or local authorities to report, where required under State law, incidents of suspected child, elder, or domestic abuse or neglect.
- (c) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of the Agency, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(d) To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19, [www.whitehouse.gov/wp-content/uploads/2017/11/Circular-019.pdf](http://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-019.pdf) at any stage of the legislative coordination and clearance process as set forth in that Circular.

(e) To the Internal Revenue Service (a) to obtain mailing addresses of debtors in order to collect a Federal debt; and (b) to offset a Federal debt against the debtor's income tax refund.

(f) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USAID, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USAID officers and employees.

(g) To a Federal, state or local agency, professional licensing authority, or other appropriate entities as required to ensure the professional responsibility requirements are met by USAID employees.

(h) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal or administrative proceedings, when the USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(i) To appropriate agencies, entities, and persons when: (1) USAID suspects or has confirmed that there has been a breach of the system of records; (2) USAID has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(j) To another federal agency or federal entity, when USAID determines that the information from the system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing,

minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, that might result from a suspected or confirmed breach.

(k) To the National Archives and Records Administration (NARA), for the purposes of records-management inspections conducted under the authority of Sections 2904 and 2906 of Title 44 of the U. S. C. and in its role as Archivist.

(l) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(m) To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(n) To international and foreign governmental entities in accordance with law and formal or informal international agreement.

(o) To third parties during the course of an administrative, civil or criminal investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(p) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U. S. C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

(q) To a former employee of USAID, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel--related or other official purposes where the agency requires information or consultation assistances from the former employee regarding a matter within that person's former area of responsibility.

(r) To the DOJ, United States Attorney's Office, or other federal agencies for further collection action on any delinquent debt when circumstances warrant, as well as to a debt

collection agency for the purpose of debt collection.

(s) To third parties about individuals who are their employees, job applicants, contractors, or any other individual who is issued credentials or granted clearances by the third party to secured areas when relevant to such employment, application, contract, or issuance of the credential or clearance.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** USAID stores records in this system in electronic format and paper format. Records in paper format are stored in file folders in locked cabinets. Records in electronic format are kept in a user-authenticated and password-protected computerized database system.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** USAID indexes and retrieves records by the case name, party names, case number, or names of individuals reasonably anticipated to be involved in litigation.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** USAID follows NARA-approved records retention schedule. Periods of retention vary depending on the type of litigation record. See [http://www.archives.gov/records-mgmt/rcs/schedules/independent-agencies/rg-0047/n1-047-10-004\\_sf115.pdf](http://www.archives.gov/records-mgmt/rcs/schedules/independent-agencies/rg-0047/n1-047-10-004_sf115.pdf). The Office of the General Counsel reserves the right to retain for an indefinite period certain records that, in the judgment of that office, are of precedential value.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** USAID maintains electronic and paper files with personal identifiers in secure storage areas. Access to USAID buildings where records are located is restricted by 24-hour electronic identification.

**For Paper Records:** USAID secures records in lockable metal filing cabinets within a locked room when not in use. Access to these records are strictly limited to authorized USAID personnel. Only the case number appears on the file label. The file is cross-referenced with a separately secured list with a corresponding name and case number.

**For Electronic Records:** USAID personnel store and password-protect electronic records in a user-authenticated, USAID-issued computer and/or a USAID-approved, computerized database system. These records are maintained separately from other systems of records. Access to these electronic records is strictly limited to authorized USAID personnel.

All persons having access to these records shall be trained in the proper handling of records covered by the Privacy Act. Secondary disclosure of released information is prohibited without client consent.

**RECORD ACCESS PROCEDURES:** Under the Privacy Act, individuals may request access to records about themselves. These individuals must be limited to citizens of the United States or aliens lawfully admitted for permanent residence. If a Federal Department or Agency or a person who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex - Room 2. 4. 0C, 1300 Pennsylvania Avenue, NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507-1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U. S. C. 1746, in the following format:  
If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

**CONTESTING RECORD PROCEDURES:** See above, Record Access Procedures.

**NOTIFICATION PROCEDURES:** See above, Record Access Procedures.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** USAID has claimed exemptions for several of its other systems of records under 5 U. S. C. 552a(j)(2) and (k). Additional exemptions are delineated in 22 CFR 215. 13 and 215. 14. During the processing of FOIA and Privacy Act requests and administrative appeals, exempt records from these other systems of records may become part of the case record in this system of records. To the extent that exempt



records from other USAID systems of records are entered or become part of this system, USAID has claimed the same exemptions. In addition, any such records compiled in this system of records from any other system of records continues to be subject to any exemption(s) applicable for the records as they have in the primary systems of records of which they are a part.

**HISTORY:** USAID established USAID-26: Litigation Records as a new system of records on November 3, 1975, and published a modification on January 10, 2014 (42 FR 47386).

**Celida Ann Malone,**

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[FR Doc. 2022-10090 Filed: 5/10/2022 8:45 am; Publication Date: 5/11/2022]